1672.

SUPREME COURT OF THE UNITED STATES.

No. 170.

J. M. MATTINGLY & SARAH ANN, HIS WIFE, APP'TS,

vs.

JOHN H. BOYD, ADM'R OF DAVID H. BOYD, DEC'D.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF WEST TENNESSEE.

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UNITED STATES OF AMERICA.

Pleas at a circuit court of the United States, in the 8th circuit for the district of West Tennessee, at a term thereof begun and held at the court-house in the town of Jackson, on the third Monday in the month of March, 1856. Present and holding said court the honorable West H. Humphreys, judge of the district courts of Tennessee.

Be it remembered, that on the 5th day of September, 1853, the following proceedings on the chancery side of said court were instituted, to wit:

To the judges of the circuit court of the United States for the district of West Tennessee:

Sarah Ann Tharp, a feme sole, and a citizen of the State of Kentucky, one of the United States of America, brings this her bill against John H. Boyd, of Carroll county, in the district of West Tennessee, and a citizen of the said State of Tennessee.

And thereupon your oratrix complains and says, that she is the daughter of Pheath Roane, formerly of said State of Kentucky, but long since deceased; that after the death of her father, her mother, Eliza Acta Roane, intermarried with one Joseph N. Bylen, commonly called Jo. N. Bylen. That your oratrix was then an infant of tender years; and her step-father, the said Jo. N. Bylen was appointed her regular guardian by the proper authority, as she supposes.

She further states, that Judge Roane, of the city of Richmond, Virginia, was a paternal uncle of hers, and that he did by his last will and testament bequeath to your oratrix a legacy of one thousand dollars; that the said Judge Roane departed this life, leaving his said will in full force, which was known and established after his death, and one William H. Roane, qualified as the executor of said will; and the said William H. Roane failing to pay your oratrix said legacy when it became due and payable, the said J. N. Bylen, the guardian of your oratrix, took steps to collect the same; he appointed one David H. Boyd his agent, by written power of attorney, which is now on file in the chancery office in the city of Richmond, as your oratrix believes, authorizing him, Boyd, to collect this legacy for him; that under this authority the said Boyd employed one Thomas Williams, esq., an attorney, to bring suit and recover this legacy, which, as she charges, the said Williams did, by suit brought in the city of Richmond; and soon after the recovery thereof, he paid the same over with interest to the said David H. Boyd, as follows: The legacy was due the 4th of September, 1823, $1,000; and *interested* was collected thereon from that date to the 19th September, 1826, being 3 years and 15 days, $182 50, making eleven hundred and eighty-two dollars and 50 cents, which was

paid by the said William to the said David H. Boyd about the 21st October, 1826, besides costs of suit, to be paid by him, said Boyd, as agent aforesaid, to the said Joseph N. Bylen, his principal, as guardian of your oratrix; and she charges that said Boyd, as agent aforesaid, was preparing in good faith, and intended to pay over to said Bylen, guardian of your oratrix, the aforesaid legacy, with interest as aforesaid, when, on the 10th October, 1827, William H. Roane sued out of the clerk's office of the superior court of chancery for the Lynchburgh district, in the State of Virginia, a subpœna and attachment against the said Joseph N. Bylen, the said David H. Boyd, and the said Thomas Williams—restraining the said Boyd and Williams from paying said legacy over to the said Joseph N. Bylen, and from conveying or secreting the debts by them owing to, or effects in their hands belonging to, the said Bylen, until the further order of said court of chancery.

She charges that said order of attachment was duly served on the said David H. Boyd on the said 10th day of October, 1827, and on the said Williams on the 23d October, 1827; and said bill of attachment was filed, in this case, expressly to attach the said legacy in the hands of the said Boyd, and for no other purpose, to prevent him from paying the same over to said Bylen, your oratrix's guardian, or any one else; and she charges, that by virtue of this proceeding, the said legacy was attached in the hands of the said David H. Boyd, and placed in the custody of the law, and he restrained from paying the same over to the said Bylen, or any one else, until further ordered by said court.

She states that the said William H. having filed his bill and obtained his attachment as aforesaid, the said David H. filed his answer thereto upon oath, admitting the facts in reference to said legacy, as they are stated and asserted in your oratrix's bill; and in reference to the guardianship of said Bylen, and the agency of the said David H.; and asserting that he had intended paying said legacy over to the said Bylen, when he was inhibited from doing so by the process of said court of chancery.

The said Williams filed his answer to said bill, admitting the collection of the legacy and the payment of the same over to the said David H., soon after the collection of the same. She states that the cause remained at issue upon the docket in the chancery court at Lynchburgh upon these answers, and a pro confesso as to the said Bylen through neglect and inattention of both plaintiff and defendants, until the 1st Monday in July, 1852, up to which time the cause had been regularly continued at rules, without any other order or action being had thereon, when the death of the said William H. Roane was suggested, and the fact entered of record; and 12 months thereafter to wit, on the 4th day of July, 1853, the death of the said William H. Roane having been suggested for one year, and no action having been taken thereon, and no application having been made for process to revive the cause in the name of the

personal representative of the plaintiff, the cause was, by the order of the said court, dismissed or abated, as the law directs in such cases.

While this suit was pending in Lynchburgh, the said David H. Boyd removed from Virginia and settled in Carroll county, Tennessee, where he resided for many years, and where he died intestate, as your oratrix is informed and believes, in the year 1851 or 2, and that the defendant, John Boyd, his brother, took letters of administration upon his estate sometime in the year 1852.

Your oratrix charges, that by virtue of the pendency of this bill of attachment against the said David H., he kept and retained possession of the aforesaid legacy of your oratrix, from the time he received it in 1827 until his death; knowing all the time or being fully informed that the legacy or interest that he had received, as the agent of said Bylen, at the hands of the said Williams, belonged to your oratrix, and that it was the legacy bequeathed to her by her uncle, Judge Roane, above referred to; and she charges that he has had the use and benefit of said fund, and that he has used the same in the same way and to the same extent that he has used his own money and means from the time the attachment was served on him until his death. No order or decree was ever made by said chancery court at Lynchburg, in said suit, discharging or dissolving said attachment or injunction until July last; and she charges, that the said David H. wilfully permitted said attachment to remain in force against him, for the fraudulent purpose of keeping and using said fund for his own use and benefit, and to keep off the day of account to said Bylen as long as possible; and she therefore insists and charges that the estate of said David H. should account to her, not only for the principal fund or legacy, and the interest thereon, that was paid into his hands as aforesaid, but also for the interest on the same from the time of the attachment service up to the time of his death. She charges that his estate is sufficient to pay and satisfy said legacy and interest, and that the said John has the same in his hands or under his control. She has reason to believe, and does believe and charge, that the inventory or inventories made by the said John of the assets of the said David H., does not show a full and complete account of all the available assets of said estate that have come or that should have come to the hands of the said John as adm.; and as she has no other means within her knowledge of ascertaining the fact, she prays for a full account and discovery of all the assets of said estate, whether they have come to the hands of said administrator or not, and whether they have been embraced in his inventories or not.

She charges, that not a dollar of her said legacy, or interest thereon, has ever been paid to her, or to her guardian aforesaid, up to the present moment, either by the said David H. in his lifetime, or by the said John since his death, or by one else.

She further charges, that said Bylen, her guardian, also neglected said suit, and permitted the said attachment to stand in force, and the

suit to remain undisposed of; whereby she has been deprived of her said legacy for so great a lapse of time, and for which he is or should be accountable; but she states that the said Bylen emigrated from Kentucky many years ago, and died in Texas or California several years since, insolvent, as your oratrix has been informed and believes, and charges, and that it would be useless to pursue him or his estate for the same.

She states and charges, that no account or settlement has ever been had between the said Bylen and the said David H., in reference to the actings and services of the said Boyd, as the agent of the said Bylen, in reference to the collecting the said legacy; and the complainant submits to the consideration of the hon. court, whether any or what compensation shall be allowed. In the aforesaid answer of the said David H., he filed a charge of about $87 00 for expenses and services in attending to said suit, and then exhibited a separate charge of one hundred dollars for trouble and vexation. This last charge your oratrix insists is unjust, and ought not to be allowed.

Your oratrix therefore prays, that the said John H. Boyd be made defendant to this bill, with apt and proper words to charge him, and that he answer on oath all the statements and charges contained in this bill without equivocation or evasion, according to the best of his knowledge, information, hearsay, and belief. She prays for a subpœna, &c., commanding &c., and on final hearing, she prays for a decree for her said legacy and interest thereon, and that the estate of said David H. account to her for the same. And if she is mistaken in the relief she here prays, then grant her such other relief as the nature of her case requires and equity demands, and as in duty bound, your oratrix will ever pray, &c.

McCLANAHAN,
Sol. for Compl't.

And to the end that the defendant may, if he can, show why your oratrix should not have the relief hereby prayed, and may, upon his corporal oath, according to the best and utmost of his knowledge, remembrance, information, hearsay, and belief, full, true, direct, and perfect answer make to the interrogatories hereinafter mentioned and set forth:

1. Whether he is the administrator of David H. Boyd, late of Carroll county, Tennessee, deceased, and how long he resided in Carroll county?

2. Whether the said David H. did or did not reside in the State of Virginia previous to his removal to Tennessee, and did not reside in Virginia from 1824–5 up to 1830, or after?

3. Was or was not the said David H. the same David H. Boyd who acted as the agent of Joseph N. Bylen, then of Kentucky, the guardian of the complainant in this suit, in collecting a legacy of one thousand dollars bequeathed to complainant by the will of

Judge Roane, of the city of Richmond, from the executor of said Roane?

4. Whether the said David H. did or did not receive said legacy, as the agent of the said Bylen, and by virtue of a power of attorney from him for that purpose; and did he not retain and use said legacy for his own benefit, from the time he received it until his death?

5. Whether or not the estate of the said David H. is or is not sufficient to pay the legacy claimed by complainant in this bill, and interest on the same during the time it was in the hands of the said David H.; let him state the value of said estate in his hands; and let him set forth what kind of property it consists of; whether of negroes, and how many, or other personal property; or cash on hand, and how much; or what quantity of either; let him state how much cash was on hand at the time of the death of the said David H.; and let him state and discover the entire assets of said estate of every kind?

6. Whether or not the complainant herein is the same person, to wit, the same Sarah Ann Roane, to whom the foregoing legacy was bequeathed?

McCLANAHAN,
Sol. for Complainant.

And afterwards, to wit, on the fourth day of November, 1853, the defendant filed the following answer:

The answer of John H. Boyd, defendant, to the bill of complaint exhibited against him by Sarah Ann Tharpe, in the circuit court of the United States for the district of West Tennessee. This respondent now and at all times hereafter reserving all and all manner of exceptions, &c., to the many imperfections and untruths contained in said bill of complaint, for answer thereto, or to so much thereof as he is advised is material and proper for him to answer, answers and says:

That he has been informed and believes, that the complainant was the daughter of Fayette Roane, formerly of Kentucky; that after Fayette Roane's death, his widow was intermarried with said Joseph N. Bylen, and that said Bylen was the guardian of complainant. Of these things this respondent has no knowledge, and speaks from hearsay; he has no knowledge, or information, or belief as to whether Judge Roane bequeathed to complainant any legacy whatever; nor whether Judge Roane's will was proven, or who was the executor thereof; or whether said Bylen appointed David H. Boyd his agent to collect a legacy, by writing or otherwise; or whether David H. Boyd employed Thomas Williams to collect said legacy, or whether the same was collected, or by whom, or to whom paid, or the time, (if these transactions happened.) Nor has this respondent any knowledge, information, or belief as to the suit in chancery in the name of Wm. H. Roane, against said Bylen,

Boyd, and Williams, ever having been commenced, prosecuted, or terminated in the Lynchburgh district, Virginia, as charged, nor as to the commencement or end of said suit as to time, or the objects for which the same was instituted, if instituted at all; nor as to what proceedings were had in the case, if any; nor whether the said David H. Boyd received, or kept, or used said legacy, or any part of it, or had any settlement with said Bylen; nor whether the said Bylen has died in Texas or elsewhere, or was or is insolvent. As to all these matters, this respondent has no knowledge, information, or belief. In answering the interrogatories propounded, he answers:

1st. That he is the administrator of David H. Boyd, late of Gibson county, deceased. That said David H. Boyd departed this life the 25th August, 1851, and that respondent administered on his estate within some two months thereafter. Said David H. had resided in or near Carroll county between 15 or 16 years; part of the last year he resided in Gibson county, near the Carroll line.

2d. This respondent does not know, and is not informed, and cannot answer, that said David H. was the agent of said Bylen in collecting the legacy referred to in the bill or interrogatory, and cannot answer that he acted in that capacity; not having any information, and consequently no belief as to said legacy, or the collection thereof by any person whatever.

3. That said David H. did reside in Virginia until the fall of the year 1835, from his birth, which was in Virginia.

4. This respondent does not know, and is not informed, and therefore cannot answer, whether the said David H. received said legacy as the agent of Bylen, or otherwise; nor whether he retained said legacy for his own use, or for any other purpose, until his death, or any other time.

5, He states that he believes the estate of said David H. will be sufficient to pay the legacy claimed, with interest, if recovered. The estate consists of some seven (7) negroes, with some thirty-five hundred dollars, and notes and claims, &c., which may be made available, about one thousand dollars. Respondent has about one hundred dollars in cash on hand now; the said David H. had, when he died, not more than from five to ten dollars on hand. This property is subject to the widow's rights and the cost of administration.

6. This respondent does not know, and is not informed, and consequently has no belief, as to whether the complainant is the person to whom said legacy was left, if any ever was bequeathed to any person.

The foregoing answers to the interrogatories in said bill are made by this respondent from his knowledge, information, hearsay, and belief; and this respondent claims all benefit whatever of the several statutes of limitation applicable to his case, and prays the same advantage of said statutes as if he had pleaded the

same in this cause. And further, this respondent insists upon and requires strict proof of all the several material matters set forth and charged in said bill; he is sued in a representative character, and does not admit but denies all matters contained in said bill, except such as he was admitted directly in his answer.

And having fully answered all the matters and things required of him in said bill, and which he is advised is necessary and material for him to answer, now prays to be hence dismissed with his reasonable costs to be adjudged to him, &c.

By M. & H. BROWN.
His Solicitors

STATE OF TENNESSEE,
Madison county.

John H. Boyd, the above named respondent, personally appeared before the undersigned, and being by me duly sworn, upon his oath says, that all the several matters stated in the foregoing answer, as of his own knowledge, are true, and that all the other several matters and things therein stated he believes to be true, and further saith not.

J. H. BOYD.

Sworn to and subscribed before the undersigned, circuit judge, of the State of Tennessee.
October 25th, 1853.

JOHN READ.

And at December rules, 1853, the complainant filed her replication in the words and figures, to wit:

This repliant, saving and reserving unto herself all and all manner of advantage of exception to the manifold insufficiences of said answer, for replication thereunto saith, that she will aver and prove her said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to replied unto by this repliant, without this, that any other matter or thing whatsoever in her said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this hon. court shall direct, and humbly prays, as in and by the said bill she hath already prayed.

McCLANAHAN,
Sol. for Complt.

And afterwards, to wit, on the 14th day of October, 1854, the following proceedings are of record in this cause:

Saturday the 14th day of October, 1854. Present, the Hon. West H. Humphreys, judge of the district court of Tennessee.

SARAH A. THARP, complainant,
and
JOHN H. BOYD, adm., &c., defendant.

The parties by their attorneys appear, and by consent this cause is remanded to the rules for further proof; and the cause is continued as upon the affidavit of the complainant. Therefore, it is ordered by the court, that the defendant recover of the complainant the costs of the present term and of this continuance, for which execution shall issue as at common law.

And afterwards, on the 14th day of April, 1855, the following proceedings were entered of record:

Saturday the 14th day of April, 1855. Court met according to adjournment. Present, the Hon. West H. Humphreys, judge of the district courts of Tennessee.

SARAH A. THARP, complainant,
and
JOHN H. BOYD, adm'r, &c., defendant. } In chancery.

The parties by their counsel appear; and by consent this cause is continued.

And afterwards, the following proceedings in this cause were entered of record, to wit:

Saturday, the twenty-second day of September, 1855. Court met according to adjournment. Present, the Hon. West H. Humphreys, judge of the district courts of Tennessee.

SARAH A. THARP, complainant,
and
JOHN H. BOYD, adm'r, &c., defendants. } In chancery.

The parties appear by their attorneys; and upon the application of the complainant, this cause is remanded to the rules; and the intermarriage of the complainant, Sarah A. Tharpe, with J. M. Mattingly is suggested, and not denied. It is therefore ordered, that this suit be revised in the name of said J. M. Mattingly and wife, Sarah A.

And afterwards, the following final proceedings were entered of record in this cause:

Saturday morning, the 22d day of March, 1856. Court met according to adjournment. Present, the Hon. West H. Humphreys, judge of the district courts of Tennessee.

Between J. M. MATTINGLY and his wife, Sarah Ann, complainants,
and
JOHN H. BOYD, administrator of David H. Boyd, defendant.
} In chancery.

This cause came on to be heard at this term, and was argued by counsel. The reading of the records introduced as evidence by the complainants was objected to by the defendants—which objection was overruled by the court, and the records admitted to be read.

And thereupon, upon consideration thereof, it was ordered, adjudged, and decreed, as follows: That the bill of complainants be dismissed, and that the defendant go hence without day, and recover of the complainants his costs in this behalf expended, for which execution shall issue as at law.

From which judgment of the court, the complainants by their counsel move the court to grant them an appeal from the decision of this court to the Supreme Court of the United States, at Washington city, in the District of Columbia; and that they be allowed four months' time within which to execute bond, with security for the prosecution of said appeal: which motion is granted accordingly.

And, be it remembered, on the 24th day of July, 1854, the following deposition was filed in the clerk's office:

STATE OF VIRGINIA,
County of Halifax.

Be it remembered, that on this 6th day of July, 1854, J. R. V. Barksdale, a justice of the peace in and for the county aforesaid, called and caused to come and appear before me, at my own residence, in the county of Halifax, and State of Virginia, to testify and the truth to speak in behalf of the plaintiff, in a certain matter of controversy now depending and undetermined in the circuit court of the United States of America, in the 8th circuit, for the district of West-Tennessee, wherein Sarah Ann Tharp is plaintiff, and John H. Boyd, adm'r, &c., is defendant, upon the equity side of said court, the following named witness, to wit: Dr. Raleigh White, of the county of Pittsylvania, Virginia; and the said witness being first by me cautioned and sworn to testify to the truth, the whole truth, and nothing else but the truth, in the matter of controversy aforesaid, I did carefully examine said witness, and he did thereupon depose and say as follows, in answer to the following questions put to him by the plaintiff's agent:

Question 1st. Were you acquainted with the late Dr. David H. Boyd, of West Tennessee?

Answer. I was very well acquainted with him while he lived in Virginia; he was a son of the late George Boyd, formerly of Pittsylvania, Virginia, with whom I was also very well acquainted.

Question 2d. Are you acquainted with the circumstances attending the collection of a sum of money on account of an agency to the infant child of the late Fayette Roane, of Kentucky, whose widow Dr. Bylen, of Kentucky, married? If acquainted with the matters referred to, please answer fully all that you know.

Answer. All that I know about, is what I heard from Dr. David H. Boyd. I heard him say that he had the collection of some money from Roane's estate, in Richmond, or the neighborhood, which was due to Fayette Roane's child, of Kentucky. I do not remember the child's name, nor do I remember the name of the man who married Fayette Roane's widow; she was a Miss Hunt before she married Roane. Dr. Boyd told me he had the collection of the legacy; that he received the money, and had lent it to his father, George Boyd, and that he expected to loan it, as his father was in failing circumstances, if not entirely insolvent. I do not remember what year it was that Dr. Boyd said he got the money for this legacy; but it was about the year 1826.

Question 3d. What was the condition of George Boyd about that time?

Answer. He was in failing circumstances, and, in fact, considered broke; and shortly afterwards, it was apparent to every body that he was insolvent.

Question 4th. What was the circumstances of Dr. David H. Boyd at the time he had the conversation with you?

Answer. He had no property except a horse.

Question 5th. At the time Dr. David H. Boyd had this conversation with you, was he or his father able to pay one thousand dollars, or could that amount have been made out of either or both of them, in your opinion?

Answer. I do not think that either George Boyd or David H. Boyd could have paid one thousand dollars at that time; nothing could have been made out of David H. Boyd at that time, as he was a young man, with nothing but a horse; his father, George Boyd, was very much embarrassed, and I think it very doubtful whether anything could have been made out of him, as what little property he had was all encumbered. I know David H. Boyd told me he was expected to get the money loaned him back again.

Question 6th. How came David H. Boyd to make his communication to you?

Answer. We were in a conversation about the embarrassed condition of his father.

Question 7th. What became of George Boyd and his son David? and what were their circumstances when they left Virginia?

Answer. They both went to Tennessee, I understood, and both are now dead; they were both insolvent when they left here.

Question 8th. What are your opportunities for knowing the condition of George Boyd and David H. Boyd, and please state your occupation and age?

Answer. George Boyd lived in the same county with me, about 10 or twelve miles from me. I have been a physician forty years. I have been frequently at George Boyd's, and practiced in his family; I am now about 60 years of age.

Question 9. Did you ever hear David H. Boyd say what amount he collected on account of the legacy to Miss Roane, and how much he loaned his father of said legacy?

Answer. He told me it was one thousand dollars, I think; he said he let his father have all that he had received on account of the legacy.

Question 10. Did he say who authorized him to receive the legacy?

Answer. If he did I do not remember it; he told me he was authorized to collect a legacy due Miss Roane, of Kentucky, and that he had received the money and loaned it to his father. I inferred from his conversation that he had authority from her guardian.

Question 11th. Was it prudent to loan George Boyd money at the time David H. Boyd let him have Miss Roane's money?

Answer. I should say it would have been very imprudent to have loaned George Boyd any amount of money at that time.

Question 12. How long did David H. Boyd have this legacy in his hands before he loaned it to his father?

Answer. I think he said he had it but a short time; he said, as soon as his father heard he had the money he applied to him for it, and made such fair promises that he let him have it, and never expected to get. And further this deponent saith not.

RALEIGH WHITE.

And I, the said R. V. Barksdale, justice of the peace in and for the county of Halifax, and State of Virginia, certify that the deposition of the said Raleigh White was taken at my house as aforesaid, because said witness lives in my neighborhood, in the adjoining county of Pittsylvania, in the State of Virginia, a greater distance than one hundred miles from Jackson, in the State of Tennessee, the place of trial of the suit or matters of controversy aforesaid; and I caused no notification of the time and place of taking said deposition to be made out and served upon said John H. Boyd, the adverse party, or his counsel, to be present at the taking of said deposition, and to put interrogations if he saw proper, because neither the said John H. Boyd, nor his counsel, nor agent, reside or live within one hundred miles of the place of caption to take said deposition, being the place where the same was taken. And I do further certify that the said deposition is taken down by me in my own handwriting, from the statement of the said witness, made in

my presence—he being present all the time; and said deposition was signed by said witness in my presence, after being reduced to writing as aforesaid, and read over to him. And I further certify, that I am not of counsel or attorney of either of the parties aforesaid, or interested in the event of the cause in controversy, or related or of kin to either of the parties.

In testimony whereof, I have hereunto set my hand and seal, this the 6th day of July, 1854.

R. V. BARKSDALE, [SEAL.]
Justice of the peace for the county of Halifax, and State of Virginia.

And afterwards, on the 30th day of August, 1854, the following deposition in this cause, was filed in the clerk's office:

STATE OF VIRGINIA,
City of Richmond, ss:

Be it remembered, that on the 15th day of August, 1854, I, Harris R. Sutton, a notary public in the city and State aforesaid, have called and caused to come and appear before me, at my office, in the law building in said city, Charles R. Hunt, of the county of Henrico, and State aforesaid, to testify and the truth to say on behalf of the plaintiff, in a certain matter of controversy now depending and undetermined in the circuit court of the United States of America, in the 8th circuit, for the district of West Tennessee, wherein Sarah Ann Tharpe is plaintiff, and John H. Boyd, admr., &c., is defendant, upon the equity side of said court, the following named witness, Charles R. Hunt; and the said witness being by me first coutioned and sworn to testify to the truth, the whole truth, and nothing else but the truth, in the matter of controversy aforesaid, I did carefully examine the said witness, and he did thereupon depose and say as follows, in answer to the following questions:

1st. Question by plaintiff's agent.

Were you ever acquainted with Dr. David H. Boyd, late of West Tennessee?

Answer. I knew him intimately whilst living in Pittsylvania county, Virginia, where he was born and raised.

2d. Question by same. Where did you reside at the time you knew him?

Answer. I resided with my mother in the county of Halifax, Virginia, an adjoining county to Pittsylvania, and within twenty miles of George Boyd, the father of David, with whom he lived.

3d. Question by same. Did you ever know anything about a legacy of $1000 bequeathed to Sally Ann Roane, infant daughter of Fayette Roane, of Kentucky, by her grandfather, Judge Spencer Roane, of Virginia?

Answer. I have always known much about that legacy. Doctor David H. Boyd had the collection of it, and here are the facts in the case. Dr. Boyd's family and my family, as also the family of Sally Ann Roane, (on the side of her mother,) were relatives and friends. Dr. Boyd and myself were about the same age; grew up together; and he was often at my mother's; and in this way I had an opportunity of knowing the facts about this legacy from his own lips. Fayette Roane, late of Kentucky, married Betsy Hunt, in Charlotte county, Virginia, who was born and raised within three miles of my father's residence; he moved to Kentucky soon after his marriage, and lived not more than a year or two afterwards; he left an only child, whose name was Sally Ann; whose mother intermarried with Dr. Joseph Bylen, of Kentucky. Dr. Bylen became her guardian. Judge Spencer Roane, of Virginia, bequeathed to Sally Ann, a legacy of $1,000. Dr. Bylen, her guardian, desired to collect it. Dr. David H. Boyd, the relative of his wife, was attending the medical school of Lexington, Kentucky, about thirty miles from Harrodsburgh, the residence of Dr. Bylen, whose family as a relative and friend he visited. On his return to Virginia, Dr. Bylen informed him to apply to Judge Roane's representatives, and collect the legacy bequeathed to Sally Ann. The application was made, and payment refused until ordered by the court. Thereupon Samuel Tagen, esquire, attorney at law, of the city of Richmond, commenced a suit in the chancery court for the Richmond district to recover the legacy; in that time, a decree was rendered ordering Judge Roane's estate to pay over to Sally Ann Roane's guardian the amount of the legacy, with interest thereon; which, with the interest, amounted to about $1,200, less Mr. Taylor's fee and commissions as attorney—net amount about $1,150. Thomas Williams, the brother-in-law of Dr. Boyd, in the fall of 1826, was a merchant, and was going to Richmond to buy his goods. Dr. Boyd gave him an order to apply to Mr. Samuel Taylor, the attorney, and get the money. Mr. Taylor paid the money over to Mr. Williams. Williams carried it home to Pittsylvania county, and notified Dr. Boyd that the money was ready. Dr. Boyd resided with his father 15 or 18 miles from Williams' residence. George Boyd, the father of David, proposed to borrow the money; he was exceedingly hard run, and considered broke at the time. David held the money as the agent of Dr. Bylen, who was anxious to receive it; but was finally prevailed upon by George Boyd, his father, to let him have it; they went together to Williams, the latter part of November, 1836, and David received the money from Williams' hands, and let his father have it. An act so unjust to Dr. Bylen, who had confided in him so much, produced much remark throughout the community; and the impression was created at once that the money, by being so lent to George Boyd, was lost. Four months after the money was so lent, William H. Roane sued out an attachment in the chancery court for the Lynchburgh district

against Dr. Joseph N. Bylen, David H. Boyd, and Thomas Williams, restraining Boyd from conveying the money out of the commonwealth, upon the ground that he held a claim against Fayette Roane, to which he desired to subject it. Dr. Boyd held as a reason for not paying over the money to Dr. Bylen, that it was attached in his hands, and he was thereby prohibited from paying it over; and so the thing stood, until June term, 1853, when the suit was disposed of. Although Wm. H. Roane was stopping this money in the hands of Dr. Boyd by an attachment, he was also prosecuting his claim in the federal court of Kentucky, against Sally Ann Roane, now Sally Ann Tharpe, as the heir at law of Fayette Roane, her father. This suit was not decided until May term, 1853, when it was decided in Mrs. Tharpe's favor, and against William H. Roane. About the year 1826, George Boyd hired of my mother, then a widow lady, a negro man as a hand at a tobacco factory; she never could make anything out of him for the hire; he was considered insolvent, and so died. The Sally Ann Roane, the daughter of Fayette Roane, entitled to the legacy of $1,000 under the aid of Judge Spence Roane, of Virginia, her grandfather, is the identical lady who is now plaintiff in a suit pending in the circuit court of the United States, at Jackson, West Tennessee, styled Sarah Ann Tharpe, plaintiff, against John H. Boyd, adm'r, &c., in which she is endeavoring to recover her money. Dr. Boyd, whilst a resident of Virginia, was poor, and in no condition to make this money good; hence the debt was ever regarded as lost; and further, this deponent saith not.

CH'S R. HUNT.

STATE OF VIRGINIA,
City of Richmond, ss:

I, Harris R. Sutton, a notary public, for the city aforesaid in the State of Virginia, do hereby certify, that the foregoing deposition of Charles R. Hunt was taken because said witness lives in the county of Henrico, in the State of Virginia, a greater distance than one hundred miles from Jackson, in the State of Tennessee, the place of trial of the suit or matter of controversy aforesaid; and I caused no notification of the time and place of the taking of said deposition to be made out and served upon the said John H. Boyd, the adverse party, or his counsel, to be present at the taking of the said deposition, and to put interrogatories if he saw proper, because neither the said John H. Boyd, nor his counsel or agent, reside or were within one hundred miles of the *the* place of caption to take said deposition, being the place when the same was taken. And I do further certify, that said deposition is taken down by me in my own handwriting from the statements of said witness made in my presence, being present all the time; and said deposition was signed by said witness, after being reduced to writing, as aforesaid,

and read over to him. And I further certify, that I am not of counsel or attorney, of either of the parties aforesaid, or interested in the event of the cause in controversy aforesaid, or related, or of kin to either of the parties.

In testimony whereof, I have hereunto set my hand and affixed my seal, at office, this the 15th day of August, 1854.

HARRIS R. SUTTON, [L. S.]
Notary Public, Richmond Virginia.

And upon the hearing of this cause, the following record was read in open court.

VIRGINIA,
In the late Superior Court of Chancery.

Amongst the records and proceedings of the said court, is the following:

Be it remembered, that at a superior court of chancery, held at the capitol, in the city of Richmond, on Wednesday, the 8th day of March, 1826, Sarah Ann Roane, an infant of tender years, by Joseph N. Bylen, her guardian and next friend, against William Brockenbrough, administrator of Spencer Roane, deceased, with his will annexed, John Roane, s'r, John Brockenbrough, William H. Roane, and Thomas Haskins, trustees appointed by the said will.

This cause was this day heard by consent of parties, upon the will, the answers of the defendants and exhibits, and was argued by counsel. On consideration whereof, the court doth adjudge, order, and decree, that the defendant William H. Roane, pay to the plaintiff the sum of one thousand dollars, with interest thereon, to be computed after the rate of six per cent. per annum, from the 4th day of September, 1823, until paid, (in full of the legacy bequeathed by the last will of the late Honorable Spencer Roane to the plaintiff, and of the interest due thereon) and the costs of this suit; but the said plaintiff is not to have the benefit of this claim, until the said Joseph N. Bylen, with one or more good and sufficient sureties, shall enter into bond, payable to the said Sarah Ann Roane, in the penalty of two thousand three hundred and ten dollars, with condition to pay to her when she shall marry, or attain the age of 21 years, the said sum of money, and also the interest thereon; or in the event that she should die an infant intestate and unmarried, to pay the same to her representatives, which bond is to be executed and deposited with the clerk of this court to be preserved by him, before any execution shall issue on this decree.

The bill, answers, and exhibits referred to in the foregoing decree, are in the words and figures following, to wit:

Bill.

To Creed Taylor, esquire, judge of the superior court of chancery for the Richmond district:

Humbly complaining, sheweth unto your honor, your oratrix, Sarah Ann Roane, an infant of tender years, under the age of twenty-one, who sues by Joseph N. Bylen, her guardian and next friend, that some time in the year the honorable Spencer Roane, the grandfather of your oratrix, departed this life, having first duly made and published his last will and testament, whereby he appointed John Roane, senior, of King William, Docter John Brockenbrough, William H. Roane, and Captain Thomas Hoskins, executors of and trustees under his said will. The executors all reccommend the executorship, and the will was duly proved before, and admitted to record in the court of Hastings for the city of Richmond; and administration with the will annexed has been granted by the same court to the honorable William Brockenbrough, all which will appear by reference to an office copy of the said will and certificate of probate hereto annexed as part of his will, and marked A. The said will, with many others, contains the following clauses, to wit: "All the rest and residue of my negroes, and their increase, as also my house and lot in Richmond, and a small plantation which I bought in Goochland for my daughter Julia, are to be vested in my trustees hereinafter named, or the services in fee. The house and lot, (and the land in Goochland, and all or any of the said negroes that they may choose in their discretion,) is to be sold on a reasonable credit, and the proceeds applied as follows, to wit, one thousand dollars is to be paid to the guardian of the daughter of my late son Fayette, now living in Kentucky; and the interest, lien, and property of the residue is to be applied annually in equal portions to the support of my daughters Julia Saunders and Anna Roane; but my said daughter Julia is, in addition, to continue to possess and enjoy a negro woman Sally, now in her possession, with her increase, and all other property now held by her; and if ever my daughter Ann should marry a man approved by my trustees aforesaid, and James Saunders should die leaving his wife, and she should again marry with like approbation, then and in that case, (and in either of them,) my said trustees are authorized and required to deliver up the shares of the property aforesaid to my said daughters severally; and also to deliver up to my daughter Julia the negro Sally and the other property mentioned as being now in her possession."

The testator, referring to his two daughters, Julia Saunders and Ann Roane, says: "It is also my will, if either of my said two daughters should die without being married as aforesaid, her share is to be held for and go to the other, as the case may be; and if both of them should die in like manner, then the whole of the said property is to go in fee to my dear son, William H. Roane."

The testator having by his will made provision for the payment of his debts, in a subsequent clause referring to the said provision, says: "If there should be a deficiency for the said debts, contrary to my expectation, it shall be made up out of the residuary negroes given to my daughters as aforesaid, not exceeding, however, one-third part thereof, and one-third part of the balance of the said debts is to be paid by my wife, and the other two-thirds by my said daughter, Eliza, and be a charge upon the personal property hereby bequeathed to them respectively." All which will more fully appear by reference to the copy of the said will.

Your oratrix is the daughter of the testator's son, Fayette, mentioned in the first above-cited clause of the said will. The said Joseph N. Bylen is the duly qualified guardian of your oratrix, as will more fully appear by reference to the transcript of the order of appointment from the county court of Maca, in the State of Kentucky, certified in due and legal form, which is hereto annexed as part of this bill, and marked B. The said Julia Saunders and the wife of the testator both survived him, and have since departed this life.

Your oratrix is advised that the payment of her said legacy of one thousand dollars is charged upon the testator's house and lot in the city of Richmond, the residence of the testator's slaves, (after satisfying all specific legacies,) and the testator's tract of land in Goochland, and is first to be paid out of the proceeds of the sales of the said property; but if not, that the said legacy is certainly first to be paid out of the proceeds of the sale of the house and lot in the city of Richmond, which will be much more than sufficient to satisfy the same, with interest thereon from the death of the testator; and which house and lot, your oratrix is advised, is in no manner charged with the payment of the testator's debts by his will.

The said William Brockenbrough, adm. as aforesaid, and the said William H. Roane, the principal acting trustee under the said will, have been often applied to by your oratrix's guardian, for the payment of the said legacy, with interest, but they have refused to pay the same, without the decree of a court of equity for their protection.

It is not known to your oratrix, whether all or any part of the property charged with the payment of her legacy has been sold; nor, if sold, what it has produced.

In tender consideration of the premises, and forasmuch as your oratrix is remediless therein, except in a court of equity, where matters of this kind are alone properly cognizable, may it please your honor to compel the said William Brockenbrough, administrator as aforesaid, John Roane, sr., John Brockenbrough, William H. Roane, and Thomas Hoskins, trustees aforesaid, (all of whom are prayed to be made defendants to this bill,) to appear and fully and distinctly answer all and singular the allegations herein contained;

and to state whether all or any part of the property charged with the payment of your oratrix's legacy has been sold; and if so, what is the amount of the proceeds of the said house and lot, and also the other property, as far as the same have been sold. And may it please your honor to decree the payment of your oratrix's legacy to her said guardian, with interest from the death of the testator, in such other period as is agreeable to the rules of equity, by a sale of the property charged with the payment of the same, or out of the proceeds of the said property in the hands of the defendants. And finally, may it please your honor to grant your oratrix all such other and further relief as may be agreeable to equity, and the nature of her case, &c.

SAMUEL TAYLOR, *F. P.*

Exhibit A, filed with the bill.

In the name of God, amen! I, Spencer Roane, of the city of Richmond, do make this my last will and testament, hereby revoking all other wills by me heretofore made.

Imprimas. I give, devise, and bequeath unto my dear wife, Elizabeth Roane, my plantation in Hanover, called Spring Garden, and also the following negroes, to wit: big Ben, Jessee, Henry, Giles, Lewis, little Lucy, and her child Peggy, and her child Sucky, and her youngest child Delphia; house Ben, Dick, Aleck, Fanny, and house Milly; as also all the household and kitchen furniture and plantation utensils to the said plantation belonging; all the plow-horses and mules, sheep, and hogs, belonging thereto at the time of my death, and one-half of the cattle which shall then be on the said plantation, and on that at New Castle. I also give her my coaches, harness, and carriage-horses; the land and negroes aforesaid, with their increase, are to be held by her for life, and the other property is to be her own. And this provision, which I deem an ample one, added to what is further given her herein, is to be in lieu and full satisfaction of her dower area of any other claim to any other part of my estate.

Item. From and after the death of my said dear wife, I give, devise, and bequeath to my dear son, William Henry Roane, the land and negroes, and their increase, above willed to her, to be held by said son, for and during his natural life, remainder to his oldest son in fee who may be living at the time of his death; and in default of such son, remainder in fee to all his daughters who may be so living, equally to be divided between them; and in default of such daughters, to my dear daughter, Elizabeth Roane, and her heirs. I also give to my said son the negro Bristle, (lately delivered to him,) Cate and her child, now abiding at Spring Garden, Dolly and Judson.

Item. I give, devise, and bequeath to my dear daughter, Elizabeth Roane, and her heirs, my plantation in Hanover, adjoining

New Castle, as also the following negroes and their increase, to wit, Abraham, Brown, Arch, Charles, Nelson, Humphrey, Moses, Tom, Billy, Joe, Bett, Aggy, Rachel, Martha, Albert, and Edward, her two children. I also give to my said daughter, all the plantation utensils, ploughs, horses, mules, sheep, and hogs, which shall belong to the said plantation at the time of my death, as also the other moiety of my cattle which shall then be on both my said plantations; and I also give her my riding horse; my old negroes, say, Franky, Sam, and Hannah, are to be supported respectively by my dear wife and daughter on their plantations.

Item. All the rest and residue of my negroes and their increase, as also my house and lot in Richmond, and a small plantation which I bought in Goochland, for my daughter Julia, are to be vested in my trustees hereinafter named, or the survivor in fee. The house and lot, and the land in Goochland, and all or any of the said negroes that they may choose in their discretion, is to be sold on a reasonable credit, and the proceeds applied as follows, to wit: one thousand dollars is to be paid to the guardian of the daughter of my late son Fayette, now living in Kentucky, and the interest, liens, or profits of the residue is to be applied annually in equal proportions to the support of my daughters, Julia Saunders and Ann Roane; but my said daughter Julia is, in addition, to continue to possess and enjoy a negro woman Sally, now in her possession, with her increase, and all my other property now held by her. If ever my daughter Ann should marry a man approved by my trustees aforesaid, and James Saunders should die leaving his wife, and she should again marry with like approbation, then, and in that case, (and in either of them,) my said trustees are authorized and required to deliver up the shares of the property aforesaid, to my said daughters, severally, and also to deliver up to my daughter Julia the negro Sally, and the other property mentioned as being now in her possession; but until such marriage or marriages shall take place, my said daughters are to be supported out of the interest, liens, and profits of the said property only, and not to be vested with the same. It is also my will, that if either of my said daughters should die without being married as aforesaid, her share is to be held and *and* go to the other, as the case may be; and if both of them should die in like manner, then the whole of the said property is to go in fee to my dear son, William Henry Roane; and I request my said son to provide as well as he can for his said sisters, and save my other trustees all other trouble save that of holding the said property, and exercising their said judgment as aforesaid on it.

Item. I will that my two plantations, Spring Garden and New Castle, shall be kept together, and worked till the end of the next year, 1823; and that all the crops, including the cane crop of that year, shall be applied to paying the debt I owe to my son William, by my notes in his hands, and all my other just debts; paying, however, out of the profits thereof, at the rate of two hundred dol-

lars per annum, each, to my wife and daughter Eliza, in addition to the necessary provisions from the farm, for my said wife; the money to be paid to my son William I wish to go in payment of his land called Curles, and to extinguish my notes in his hands, as also my other bonds, endorsements or acceptances, which I may be under for him; the balance due by him for Curles, I expect may be easily raised by him by industry and economy. In addition to this fund for paying my debts, I will that all my law books be sold, as also the tables, chairs, settees, and side-board, in the house at Richmond, and my pew in the Monumental Church, and the proceeds thereof applied thereto; if there should still be a deficiency for the said debts, contrary to my expectation, it shall be made up out of the residuary negroes given to my daughters, as aforesaid, not exceeding, however, one-third part thereof, and one-third part of the balance of the said debts is to be paid by my wife, and the other two-thirds by my said daughter Eliza, and be a charge upon the personal property hereby bequeathed to them respectively. All my crops on hand, my moneys, and the debts due to me at the time of my death, are also to come in aid and be applied in the first instance to pay my debts.

Item. Except the furniture in the house at Richmond, directed to be sold, as aforesaid, I give the residue, including beds, plates, spoons, &c., and all the kitchen utensils, to my dear wife; but my son, William Henry Roane, is to have the bed and furniture on which he sleeps, and my daughter Eliza is to have hers. I also give all my books and pamphlets, other than law books, in equal portions between my son and daughter aforesaid.

Item. The negroes herein specifically bequeathed to my wife, son William, and daughter Eliza, may be exchanged with the consent of my executors, for others of equal value, so as to suit the wishes and convenience of my said dear wife, son, and daughter, and promote the comfort of the negroes themselves.

Item. I give and bequeath to my dear wife, to my dear son, William Henry Roane, and to my dear daughter Eliza, each, a locket or a ring, at their pleasure, to be wove with the hair of my own lamented son, Patrick Henry Roane; which hair his mother has. I bear this testimony in favor of the best, the most dutiful, and most beloved of children. I can truly say, that his conduct while in life was everything I wished, and that he never caused me a pang nor a sigh, but when he died; but, alas! his early and untimely death plunged me into the deepest affliction, and deprived his country of a most brilliant and distinguished citizen.

Item. I constitute and appoint as executors of this my last will, and as trustees for the purposes herein before mentioned, my dear and highly valued friends and relations, John Roane, senior, of King William, and Dr. John Breckenbrough, as also my dear son, William Henry Roane, and my much esteemed friend, Captain

Thomas Hoskins. As executors, they will not, I hope, have much to do; nor as trustees, as I hope my son will save them that trouble.

In testimony of this will, all written with my own hand, and delivered and declared by me as such, being of sound and disposing mind and memory, I have hereto subscribed my name, this 30th day of March, one thousand eight hundred and twenty-two.

SPENCER ROANE.

At a court of Hastings, held for the city of Richmond, at the city hall, the 25th day of November, 1822, this writing, purporting the last will and testament of Spencer Roane, dec'd, was presented in court; and there being no subscribing witness thereto, Peyton Randolph, John Forbus, and John A. Chuddie, were sworn, and severally deposed that they were well acquainted with the handwriting of the said Spencer Roane, deceased, and verily believe the said writing and the name thereto subscribed to be wholly written by the decedent. Whereupon, the said writing is ordered to be recorded as the last will and testament of the said Spencer Roane, deceased. And John Brockenbrough, one of the executors named in the said will, having appeared in court and refused to take upon himself the burthen of the execution thereof, and John Roane, senior, William Henry Roane, and Thomas Hoskins, the three other executors therein named, having, by writings under their hands, also refused the executorship of the said will, on the motion of William Brockenbrough, also made oath, and, together with John Brockenbrough and Elizabeth Roane, his surities, entered into and acknowledged a bond in the penalty of thirty-six dollars, conditioned as the law directs; certificate is granted him for obtaining letters of administration on the said decedent's estate, with his will aforesaid, annexed in due form.

Testa. TH. C. HOWARD, *Clk.*

A copy.

Testa. TH. C. HOWARD, *Clk.*

Exhibit B, filed with the bill.

STATE OF KENTUCKY,
Maca County, Sct.

I, Thomas Allen, clerk of the county court for the county aforesaid, do certify that at a court held *held* for the county aforesaid, at the Court-house, Harrodsburgh, on the 6th day of January, 1823, this day came Joseph N. Bylen, who is by the court appointed guardian to Sarah Ann Roane, orphan of Fayette Roane, deceased, who executed bond with George W. Thompson and George Robards, his security, conditioned as the law directs, in the penalty of twelve thousand dollars.

And again, at another term of the said court, to wit, at the February county court, 1824, this day Joseph N. Bylen, guardian to Sarah Roane, appeared in court, agreeably to a summons by George Robards and George W. Thompson, his securities, and, with Joel R. Williams and John Bosby, his counter security, executed bond in the penalty of fifteen thousand dollars, conditioned as the law directs; whereupon the said George Robards and George W. Thompson are from their security aforesaid discharged as the law directs.

And again, at another term of said court, to wit, at the March term, 1824, of said court, 1824,

This day Joseph N. Bylen, guardian of Sarah Roane, appeared in court in obedience to a summons by John Bosby, one of his securities, and, with Joel P. Williams, Benjamin F. Pleasants and Terah T. Haggin, his counter securities, executed bond in the penalty of fifteen thousand dollars, conditioned as the law directs.

In testimony whereof I have hereunto set my hand, and affixed the seal of said county, at my office, in Harrodsburgh, this 4th day of November, 1825, and in the 34th year of the Commonwealth. (L. S.)

THO. ALLEN.

STATE OF KENTUCKY,
Maca County, Sct.

I, Joseph Blackwood, presiding magistrate in and for the county of Maca, in the State aforesaid, do certify that Thomas Allen, whose name is affixed to the written certificate, is clerk of said county court, and that his said certificate is in due form of law.

Given under my hand this 4th day of November, 1825.

JOSEPH BLACKWOOD, J.P.M.C. [SEAL.]

Answer of defendant. Roane's Adm.

The answer of William Brockenbrough, adm., with the will annexed, of Spencer Roane, deceased, to a bill of complaint exhibited in the superior court of Chancery for the Richmond district, against him and others, by Sarah Ann Roane, an infant of tender years, by her guardian and next friend.

This defendant, saving and reserving to himself all benefit of exception to whatever errors may exist in the said bill, for answer thereto, says, that Spencer Roane, the testator of the defendant, died on the 4th September, 1822, having published his last will and testament, of which a true copy is annexed to the bill; that he appointed the four persons named in the will as his exrs., and trustees, all of whom renounced the executorship, and the defendant administered with the will annexed; that all of the trustees, except William H. Roane, refused for a considerable time to

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accept the trust, and in fact did not act as trustees at all, until 1st June, 1825, and then for a special purpose. The defendant admits that a legacy of one thousand dollars was bequeathed to the plaintiff, a grand-daughter of the testator, chargeable on the funds set forth in the will, and directed "to be paid to the guardian" of the said grand-daughter; but whether the said Joseph N. Bylen be the guardian or not to whom the said legacy should be payable, the defendant presumes not to decide, and refers that question to the decision of the court upon the evidence adduced by the plf. The defendant contends that the plff. is not entitled to interest on the legacy from the death of the testator, but only from the 1st June, 1825, for the following reasons:

1. Because the personal fund derived to the trustees was by other clauses of the will appropriated, as far as it should be necessary, for the payment of debts.

That personal fund consisted of negroes, who are for the most part engaged as crop-hands on the plantations of the testator. In the fourth clause of the will is found this provision: "Item. I will that my two plantations, Spring Garden and New Castle, shall be kept together and worked till the end of the next year, 1823, and that all the crops, including the corn crop of that year, shall be applied to paying the debts, &c." These plantations could not be worked without hands, and it therefore became neressary for the administrator to keep together the negroes, as well those devised to the said trustees as to the widow and his daughter, to make crops for the payment of debts. That fund, together with the other special funds provided by the will, proved insufficient for the payment of debts, and the defendant provided to sell a number of the teams; of those devised to the trustees, he sold in January, 1824, enough to raise the sum of $2,424; and in January, 1825, the further sum of $263 $\frac{94}{100}$; the balance of the said trust slaves (valued at $1,226 $\frac{06}{100}$) were surrendered on the 8th January, 1825, by thedefe ndant, to William H. Roane, who, altho' he could not act as sole trustee under the will, yet was disposed to act as the friend of his sisters, Julia and Ann, for whose support and maintenance the trust fund was principally raised. He holds them subject to the payment of a due proportion of all debts and demands which may hereafter appear; and the defendant avers that, altho' he has settled his admn. as far as he has progressed, yet there are claims of some magnitude still pending against the estate. From this state of facts the defendant thinks he is justified in supposing that it could not be the intention of the testator that the legacy to his grand-daughter, so far as it is a charge upon the personal fund, should carry interest from his death.

2. So far as the house and lot are charged with the payment of the legacy, the defendant thinks that it could not have been the intention of the testator that it should carry interest from his his death, but from the time that the sale of the house and lot

should be available. The trustees were authorised by the will to sell them on a reasonable credit, and until the first day of payment, there could be no money out of which to pay the legacy. In point of fact the trustees did not sell till the 1st June, 1825, then they sold for $6,000, of which $1,000 was paid in cash; the residue, ($5,000,) was payable in ten years, but with interest from the day of sale. Previous to that time, the trustees refused to act, and there was no attempt made by the plff. or others to have other trustees appointed in their stead. It is true that William H. Roane, who wished to act but could not as sole trustee, attempted to sell previous to that time, but his efforts proved abortive till the period above mentioned.

3d. The defendant contends, that the plaintiff cannot demand the interest on her legacy, on the ground that it was necessary for her maintenance and support; she was not the child, but the grandchild of the testator; from her father, she is believed to have derived a good fortune, which is proved by the document marked B, referred to by the pl'ff in her will, since the guardian was required to give bond in the penalty of $15,000; and the payment of the interest to her would lesson the annuity to the testator's own daughter, for whose support he mainly wished to provide by the creation of the trust fund.

This defendant further states, that from the document B, exhibited by the plaintiff, it appears manifest that it would have been unsafe to pay the legacy to the guardian before March, 1824; for altho' he qualified as guardian in January, 1823, yet in February, 1824, and again in March, 1824, counter security was demanded of him; which requisitions serve to show some distrust, either of his solvency or fidelity.

This defendant further answering saith, that if the legacy and interest should be decreed to be paid out of the personal fund demised to the trustees as aforesaid, he believes there will not be a sufficiency of assets to pay the proportion of debts still outstanding and chargable on that fund; but, if it should be decreed, he requires that the guardian should be compelled to execute a bond with security to him conditioned to pay a just proportion of all debts and demands which may hereafter appear against the estate of his testator.

And this defendant, having now fully answered, hopes to be hence dismissed with his costs in this behalf most wrongfully sustained, &c.

CITY OF RICHMOND, *ss.*

William Brockenbrough this day personally appeared before me, the subscriber, an alderman for the said city, and made oath that the allegations in the foregoing answer contained, so far as they depend on his own knowledge, are true, and that so far as they

depend on the knowledge and information of others, he believes them to be true.

Given under my hand, this 1st day of March, 1826.

JAMES RAWLINGS.

Answer of defendants, John Roane and others.

The answer of John Roane, John Brockenbrough, William H. Roane, and Thomas Hoskins, to a bill of complaint exhibited in the superior court of chancery, for the Richmond district, against them and the adm. of Spencer Roane, deceased, by Sarah Ann Roane, an infant of tender years, by her guardian and next friend.

These defendants, saving and reserving to themselves all benefit of exception to whatever errors may exist in the said bill, for answer thereto, say: that it is true, they were appointed trustees by the will of the Hon. Spencer Roane, (which will is referred to by the pl'ff in her bill,) but the defendants, John Roane, John Brockenbrough, and Thomas Hoskins, refused for a considerable time to act in any manner under the trust; that the defendant, William H. Roane, made many efforts, during the years 1823 and 1824, to make sale of the house and lot in the will directed to be sold, but failed in doing so, until the spring of 1825, when he sold it to Lewis W. Webb for the sum of $6,000, of which $1,000 was paid to him in cash, on the day of June, and the remaining sum of $5,000 is to be paid in ten years, but with interest from the 1st day of June, 1825. The said defendant, William H. Roane, having thus affected a sale, and the purchase requiring that the legal title should be passed to him, the other defendants consented to join the said William H. Roane in the deed. The money paid, as well as the securities taken for the payment of the purchase-money, is under the control of the said William H. Roane. The defendants beg leave to refer to a certificate (marked No. 1) of the clerk of the Hastings court of Richmond, which shows that the said deed was executed at the time and for the consideration mentioned; and they affirm that they, the said John Brockenbrough, John Roane, and Thomas Hoskins, have not in any other way acted as trustees under the said will; and they would not have acted so far, if the plaintiff, or any other person interested, would have applied to a court of equity to appoint other trustees in their room.

The defendants admit that the legacy was bequeathed to the plaintiff by her grandfather, as set forth in the bill, and that it directed to be paid to the guardian of the said plaintiff; but whether the said Joseph N. Bylen be the guardian or not, to whom the legacy should be payable, the defendants do not know, and beg leave to submit that question to the chancellor, on the evidence adduced by the plaintiff.

The defendants contend, however, that the plaintiff is not entitled to interest on her legacy from the death of the testator, and that it

ought to commence on the 1st June, 1825, and not sooner; and in support of this position, they refer to the answer of the adm. to the bill of the pl'ff, and adopt it as their own.

These defendants having now fully answered, request to be hence dismissed, with their costs in this behalf most wrongfully sustained, &c.

CITY OF RICHMOND, *to wit:*

This day personally appeared before me, an alderman for the said city, William H. Roane, who made oath to the truth of the above answer.

Given under my hand, this 13th January, 1826.

J. H. EUSTACE.

CITY OF RICHMOND, *to wit:*

This day personally appeared before me, an alderman for the said city, John Brockenbrough, who made oath to the truth of the above answer.

Given under my hand, this 27th day of January, 1826.

JOHN GODDIN.

CITY OF RICHMOND, *to wit:*

This day personally appeared before me, an alderman for the said city, John Roane, who made oath to the truth of the above answer.

Given under my hand, this 31st day of January, 1826.

THO. BROCKENBROUGH.

KING AND QUEEN COUNTY, *to wit:*

This day personally appeared before me, a magistrate of the peace for the said county, Thomas Hoskins, who made oath to the truth of the above answer.

Given under my hand, this 13th day of February, 1826.

LEE BOMLAAN, [SEAL.]

Exhibit No. 1, with answer of John Roane and als.

An indenture, dated 1 June, 1825, from John Roane, of King William, John Brockenbrough and William H. Roane, of Richmond, and Thomas Hoskins, of King and Queen, trustees appointed by the will of Spencer Roane, deceased, and said William H. Roane, in his own right, and William Brockenbrough as adm. with the will annexed of said Spencer Roane, deceased, conveying to Lewis Webb, for the consideration of $6000, a lot numbered in the plan of Richmond 796, and situate at the intersection of L and 9 streets, and running 169 feet on 9 street and 130 feet on L street, (be the same

more or less,)—said deed was recorded on the 15th day of August, 1825.

Test. TH. C. HOWARD,
Clk.

The bond required to be executed by Joseph N. Bylen, guardian of the plaintiff, Sarah Ann Roane, an infant under the age of twenty-one years, by the terms of the decree of the 8th March, 1826, appears from the records of the former superior court of chancery to have been filed.

STATE OF VIRGINIA,
City of Richmond, to wit:

I, Eustuce Robinson, clerk of the circuit court of the city of Richmond, and as such having in my custody the records and papers of the former superior court of chancery, in the State aforesaid, do hereby certify that the foregoing is a true transcript of the record and proceedings of a certain suit in chancery lately depending in the said court last mentioned, between Sarah Ann Roane, an infant of tender years, by Joseph N. Bylen, her guardian and next friend, plaintiff, and William Brockenbrough, administrator of Spencer Roane, deceased, with his will annexed, and others, defendants, with all things touching the same, as fully and wholly as they now exist among the records of my office.

In testimony whereof, I have hereto set my hand and affixed the seal of the said circuit court of the city of Richmond, this twentieth day of September, in the year one thousand eight hundred and fifty-three, and in the 78th of the commonwealth.

EUS. ROBINSON. [L. S.]

STATE OF VIRGINIA,
City of Richmond, to wit:

I, John A. Meredith, judge of the circuit court of the city of Richmond, in the State aforesaid, do hereby certify that Eustace Robinson, who hath given the preceding certificate, is clerk of the said court, and that his said attestation is in due form.

Given under my hand this 21st day of September, 1853.

JOHN A. MEREDITH.

And upon the trial of said cause, the said complainant offered and read the following record:

VIRGINIA.

Pleas before the honorable the judge of the circuit court for the corporation of Lynchburgh, at the court-house in said corporation, on the 14th day of July, 1853, in the 78th year of the commonwealth.

Be it remembered that heretofore, to wit, on the 10th day of October, 1827, came William H. Roane, by his counsel, and sued out of the clerk's office of the late superior court of chancery for the Lynchburgh district, a subpœna and attachment against Joseph N. Bylen, David H. Boyd, and Thomas Williams, which subpoena, with the attachment, order, and marshal's return thereon endorsed, is in these words:

The commonwealth of Virginia, to the marshal of the Lynchburgh chancery district court, greeting:

You are hereby commanded to summon Jo. N. Bylen, and David H. Boyd, and Thomas Williams, to appear at the court-house, in the town of Lynchburgh, before the judge of the superior court of chancery, directed by law to be holden in said town, on the 10th day of the present term, to answer a bill exhibited against them in the said court, by Wm. H. Roane; and unless they shall answer the said bill within four months thereafter, the court will take the same for confessed, and decree accordingly. And this they shall in nowise omit, under the penalty of £100 each, and have then and there this writ. Witness John Wells, clerk of our said court, at Lynchburgh, the 10th day of October, 1827, and in the 52d year of the commonwealth.

J. WELLS, *C. C.*

Attaching order to restrain the defendants, David H. Boyd and Thomas Williams, from paying, conveying away, or secreting the debts by them owing to, or the effects in their hands belonging to, the defendant, Jo. N. Bylen, until the further order of the court.

HARRISON, *P. Q.*
Teste. J. WELLS, *C. C.*

Return. Jo. N. Bylen is not an inhabitant of this commonwealth.

JOS. E. ROYALL, *D. M.*

Executed on David H. Boyd the 10th day of October, 1827.
WM. R. ROYALL, *D. M.*

Executed on T. Williams October 23rd, 1827.
T. A. HOLCOMBE, *M.*

And at rules, held in the clerk's office of the said superior court of chancery, on Monday, the 5th day of November, 1827, came the plaintiff, by his counsel, and filed his bill against the defendant, which bill is in these words:

To the Hon. And. Taylor, judge of the superior court of chancery for the Lynchburgh district.

Humbly complaining, sheweth unto your honor your orator, Wm. H. Roane, of the city of Richmond, that on the 20th day of January, 1816, a certain Fayette Roane, of the State of Kentucky, executed bond to your orator for one thousand dollars, payable on demand. That some time thereafter the said Fayette Roane departed this life, and that a certain Jo. N. Bylen was qualified as administrator in Kentucky. That your orator sent an agent to Kentucky during the last autumn, who demanded payment of the said bond of said Bylen. That said Bylen acknowledged the justice of the debt, and repeatedly promised to pay it as soon as he should have received from a certain David H. Boyd, in Virginia, the sum of eleven hundred and twelve dollars and eighty-three cents.

Your orator further states and charges, that since the issuing of the original subpœna in this case, the said Boyd has admitted that he had about the sum of eleven hundred and fifty dollars in his hands belonging to said Bylen; and that he was preparing to depart from Virginia very shortly with said money to pay it over to said Bylen. That your orator thinks it of great moment that this money should not be carried out of the State by said Boyd. That that the said bond from the late Fayette Roane to your orator is not now in Virginia, having been sent to an attorney in Kentucky for collection; but it will be procured with all speed and filed in this cause, and is prayed to be then taken as a part of this bill. Wherefore your orator prays that your honor will grant a writ of subpœna, directed to said Jo. N. Bylen and David H. Boyd; and forasmuch as the said money was once, if it is not now, in the hands of a certain Thomas Williams, directed to him also, commanding said Bylen, Boyd, and Williams to answer this bill, and restraining said Boyd and Williams from paying away, secreting, or carrying away any money in their hands of, or lately due to, said Bylen, or any property belonging to him. And moreover, may it please your honor, to grant a writ of ne exeat, restraining the defendant, David H. Boyd, from departing from the commonwealth until he shall have given bond and security to perform such order as it may please the court hereafter to make hereupon.

W. H. ROANE.

Whereupon the defendant, Joseph N. Bylen, having entered his appearance, and given security according to the act of assembly and the rules of this court, and it appearing by satisfactory evidence that he is not an inhabitant of this county, it is ordered that the said defendant do appear here on the 1st day of the next term, and answer the bill of the plaintiff, and that a copy of this order be forthwith inserted in some newspaper printed in the town

Be it remembered that heretofore, to wit, on the 10th day of October, 1827, came William H. Roane, by his counsel, and sued out of the clerk's office of the late superior court of chancery for the Lynchburgh district, a subpœna and attachment against Joseph N. Bylen, David H. Boyd, and Thomas Williams, which subpoena, with the attachment, order, and marshal's return thereon endorsed, is in these words:

The commonwealth of Virginia, to the marshal of the Lynchburgh chancery district court, greeting:

You are hereby commanded to summon Jo. N. Bylen, and David H. Boyd, and Thomas Williams, to appear at the court-house, in the town of Lynchburgh, before the judge of the superior court of chancery, directed by law to be holden in said town, on the 10th day of the present term, to answer a bill exhibited against them in the said court, by Wm. H. Roane; and unless they shall answer the said bill within four months thereafter, the court will take the same for confessed, and decree accordingly. And this they shall in nowise omit, under the penalty of £100 each, and have then and there this writ. Witness John Wells, clerk of our said court, at Lynchburgh, the 10th day of October, 1827, and in the 52d year of the commonwealth.

J. WELLS, *C. C.*

Attaching order to restrain the defendants, David H. Boyd and Thomas Williams, from paying, conveying away, or secreting the debts by them owing to, or the effects in their hands belonging to, the defendant, Jo. N. Bylen, until the further order of the court.

HARRISON, *P. Q.*
Teste. J. WELLS, *C. C.*

Return. Jo. N. Bylen is not an inhabitant of this commonwealth.

JOS. E. ROYALL, *D. M.*

Executed on David H. Boyd the 10th day of October, 1827.
WM. R. ROYALL, *D. M.*

Executed on T. Williams October 23rd, 1827.
T. A. HOLCOMBE, *M.*

And at rules, held in the clerk's office of the said superior court of chancery, on Monday, the 5th day of November, 1827, came the plaintiff, by his counsel, and filed his bill against the defendant, which bill is in these words:

To the Hon. And. Taylor, judge of the superior court of chancery for the Lynchburgh district.

Humbly complaining, sheweth unto your honor your orator, Wm. H. Roane, of the city of Richmond, that on the 20th day of January, 1816, a certain Fayette Roane, of the State of Kentucky, executed bond to your orator for one thousand dollars, payable on demand. That some time thereafter the said Fayette Roane departed this life, and that a certain Jo. N. Bylen was qualified as administrator in Kentucky. That your orator sent an agent to Kentucky during the last autumn, who demanded payment of the said bond of said Bylen. That said Bylen acknowledged the justice of the debt, and repeatedly promised to pay it as soon as he should have received from a certain David H. Boyd, in Virginia, the sum of eleven hundred and twelve dollars and eighty-three cents.

Your orator further states and charges, that since the issuing of the original subpœna in this case, the said Boyd has admitted that he had about the sum of eleven hundred and fifty dollars in his hands belonging to said Bylen; and that he was preparing to depart from Virginia very shortly with said money to pay it over to said Bylen. That your orator thinks it of great moment that this money should not be carried out of the State by said Boyd. That that the said bond from the late Fayette Roane to your orator is not now in Virginia, having been sent to an attorney in Kentucky for collection; but it will be procured with all speed and filed in this cause, and is prayed to be then taken as a part of this bill. Wherefore your orator prays that your honor will grant a writ of subpœna, directed to said Jo. N. Bylen and David H. Boyd; and forasmuch as the said money was once, if it is not now, in the hands of a certain Thomas Williams, directed to him also, commanding said Bylen, Boyd, and Williams to answer this bill, and restraining said Boyd and Williams from paying away, secreting, or carrying away any money in their hands of, or lately due to, said Bylen, or any property belonging to him. And moreover, may it please your honor, to grant a writ of ne exeat, restraining the defendant, David H. Boyd, from departing from the commonwealth until he shall have given bond and security to perform such order as it may please the court hereafter to make hereupon.

W. H. ROANE.

Whereupon the defendant, Joseph N. Bylen, having entered his appearance, and given security according to the act of assembly and the rules of this court, and it appearing by satisfactory evidence that he is not an inhabitant of this county, it is ordered that the said defendant do appear here on the 1st day of the next term, and answer the bill of the plaintiff, and that a copy of this order be forthwith inserted in some newspaper printed in the town

of Lynchburgh for two months successively, and posted at the front door of the court-house in the said town.

(Affidavit of the publication of which order has never been filed.)

And at rules, holden in the clerk's office of the said superior court of chancery, on Monday, the 1st day of April, 1828,

On motion of the plaintiff, by counsel, this cause is set for hearing as to the defendants Boyd and Williams, they not having answered the plaintiff's bill within four months next after the return-day of the subpœna executed upon them in this case.

And at a superior court of chancery, holden at the town of Lynchburgh, on Friday, the 10th day of October, 1828, on motion of the plaintiff, by counsel, leave is given him to amend his bill.

And at rules, held in the clerk's office of the said superior court of chancery, on Monday the 4th day of May, 1829,

The defendant, David H. Boyd, appeared by counsel, and files his answer to the plaintiff's bill, which answer is in the following words:

The separate answer of David H. Boyd to a bill in chancery exhibited against him and others by William H. Roane in this honorable court. This respondent, now and at all times hereafter saving and reserving to himself all manner of benefit of exception to the many errors and mistakes in said bill contained, for answer thereto, or to so much thereof as he is advised is material for him to answer unto, he answers and says, that some time in , Judge Roane, of the city of Richmond, by his last will and testament, bequeathed to Sarah Ann Roane, daughter of Pheatt Roane, of the State of Kentucky, one thousand dollars. That William H. Roane took a probate of the will of Judge Roane, as qualified, as his executor, against whom, in the city of Richmond, Jo. N. Bylen, who intermarried with Elizabeth Roane, after the death of her first husband, Pheatt Roane, and who was appointed guardian of the said Sarah Ann Roane, brought suit and recovered judgment for the one thousand dollars aforesaid, with interest and costs, amounting to $1,112. This respondent received, as agent for Jo. N. Bylen, guardian aforesaid, for the ward aforesaid, on power of attorney, which is filed in the chancery office in Richmond, which money this respondent intended paying over to Bylen, as guardian of said Sarah Ann, until inhibited by the process of this court. And this respondent is advised that this money is not subject to the debts of Pheatt Roane, her father, and that the plaintiff therefore cannot recover, and having answered all things incumbent, prays to be hence dismissed, and that he, &c., &c.

(Answer, sworn to according to law.)

And at rules, held in the clerk's office of the said superior court chancery, on Monday, October 5th, 1829, on motion of the plain-

tiff, by counsel, this cause is set for hearing as to the defendant, David H. Boyd.

And at rules, held in the clerk's office of the said superior court of chancery, on the 2d day of November, 1829, the defendant, Thomas Williams, filed his answer to the plaintiff's, which is in these words:

The separate answer of Thomas Williams to a bill in chancery exhibited against him, David H. Boyd, and Bylen, by Wm. H. Roane, in the district court of chancery, holden in Lynchburg. This respondent now and at all times hereafter saving and reserving to himself the benefit of exception to the many errors in said bill contained, for answer to so much thereof as is deemed material for him to answer unto, he answers and says:

That, of his own knowledge, he knows nothing of the matters and things in the bill set forth, save that he collected the money for which a decree is now sought to be obtained, and immediately thereafter paid it over to his co-defendant, David H. Boyd. And further answering, says, that it may be doubtful, as he believes, whether the money, evidently the property of Miss Sarah Roane, could, by the plaintiff, be subjected to the payment of her father's debts. This respondent is, however, in no way interested in the struggle, nor does he know why he has been made a defendant; and having answered all things necessary or incumbent, prays to be hence dismissed with his costs in this behalf wrongfully expended.

J. B. RISQUE,
For Defendant.

(Sworn to according to law.)

And at the rules, holden in the clerk's office of the said superior court of chancery, on Monday, the 3d day of May, 1830, on motion of the plaintiff, by his counsel, this cause is set for hearing as to the defendant, Thomas Williams.

The following exhibits were filed in this cause by the defendant, David H. Boyd:

Dr. Jos. N. Bylen, guardian of Sarah Ann Roane, in acco't with Samuel Taylor.

To fee and tax upon subœna in the suit, Sarah Ann Roane aga'st Wm. Brockenbrough, adm'r Spencer Roane, dec'd, and als., in Richmond superior court of chancery.	$31 50
To fee paid clerk Hastings ct. at Richmond, for copy of Judge Roane's will.....	70
	$32 20
1826.	
Sept. 29. Principal your ward's legacy, am. 4th Sept., 1823.....	$1,000 00

Int. on $1,000 fr. 4th Sep., 1823, to 19th Sep., 1826, 3 yrs. 15 days		182 50
Costs of suit		22 79
		$1,205 26

By cash of Wm. H. Roane.

To my com. on $1,205 29		$60 26	
1826, Oct. 26.	To cash paid the order of your agent, David H. Boyd, in fund, Mr. Thomas Williams, as per order and receipt	1,112 83	
			$1,205 29

SAMUEL TAYLOR.

Dr. Bylen to David H. Boyd, Dr.

June, 1826.	Expenses to Richmond	$20 00	
	Do. services	10 00	
	Do. time paid clerk of court	6 39	
October.	Do. to Richmond	20 00	
	Services	11 00	
Nov'r.	To sundry trips to Lynchburgh on your business	20 00	
	Lawyer's fee	30 00	
	Compensation for the whole of my trouble and vexation	100 00	
			$216 39

Sarah Ann Roane, an infant of tender years, under the age of twenty-one, who sues by John N. Bylen, her next friend, to Wm. W. Henning, clerk of the chancery district court of Richmond, Dr.

1826. Subpœna vs. Roane's adm. 35, docketing 18, entering attorney 18, filing papers 26, entering return 35, rule 35, filing will 26, repl. to answer of Brockenbrough 26, rule 35, repl. to answer Jos. Roane and others 26, entering decree 18, copy 18, tax and copy costs 70, tax on suit 150, bond 43.....$6 13.

Paid by Thomas Williams.

WM. W. HENNING, *C. C.*

HARRODSBURGH, *Octo.* 30, 1827.

DAVID H. BOYD.

SIR: I just saw a letter from a Green, esq., of Virginia, to Robert Harrison, esq., of this place, informing him that he had attached the money you had collected for me in your hands to pay Wm. H. Roane the debt I wrote to you about. Now I am informed by counsel of this place that he had no right to do so. I felt every

disposition to pay Mr. Roane his money as soon as possible; but since he has seen proper to attach the money in your hands, he shall not get his money near so soon as he expected. Samuel Taylor will attend to his business for me, or if he should not, you will please inform me who I had best employ in Lynchburgh. I am making money fast here; the business I am engaged in here is remarkably brisk, and has been for the last 18 months—the manufacture of bagging and rope. I expected to see you before this from your last letter. You need not give yourself any uneasiness about the trouble or expense this business will give you, as I will see you lose nothing. We are well. Love to your father and family.

Very respectfully, your friend,

J. N. BYLEN.

Postmarked Harr'g, K., Octo. 31, paid 25.

Superscribed, Dr. David H. Boyd, Lynchburgh, Virginia.

HARRODSBURGH, *Dec. 7th*, 1827.

DR. DAVID H. BOYD:

DEAR SIR: Soon after I learnt that Wm. H. Roane, by his attorney, had attached the legacy in your hands, I wrote on to Saml. Taylor, esq., an eminent lawyer of Manchester, Va., to get his opinion on the subject; his answer is in these words: "The money bequeathed by her grandfather to your ward, Sarah Roane, is not liable to the payment of her father's debt to Wm. H. Roane or any other person; and of course cannot be attached for that purpose." You will not then pay it over to him, Roane, as I before instructed you not to do so, and am now sustained in my opinion. Should they, Roane and his attorney, not abandon the attachment, I wish you to get a good lawer to defend for me. Should they abandon the attachment, I should be glad you would transmit me the money by check divided, as I before instructed you by mail, should you not be coming yourself very shortly. They are all well and anxious to see you. Give our best respects and affectionate remembrance to your father and family, and receive for yourself our best wishes.

Yr. friend, &c.,

J. N. BYLEN.

Superscribed, Dr. David H. Boyd, Lynchburgh, Virginia.
Politeness of Moses Taylor,

HARRODSBURGH, *Dec. 19th*, 1828.

DR. DAVID H. BOYD:

DEAR SIR: It has been some time since I have heard a word from you. We confidently expected you would be in Kentucky this winter, to attend the medical lectures at Lexington, and should have been delighted to see you; but the time has now past when we expected to see you; and being anxious to hear from you, as

well as to hear what has been done in relation to Wm. H. Roane's injunction, have concluded to write and request an answer. If his injunction has been dissolved, and you do not *certainly* intend coming to Kentucky in a short time, you will please lodge the money you collected of said Roane in the bank at Richmond; get duplicate checks, and send one of them on to me; there would not in this way be any danger of miscarriage by mail. We had hoped that your father and family would *would* have been removed to Kentucky ere this, and still hope he will remove the approaching year. With the present tariff, Kentucky will become one of the most flourishing States in the Union. Please write immediately. Love and affection to you, and all your relations.

Sincerely, your friend,

J. N. BYLEN.

Postmarked, Harr'g, K., Dec. 22, '25.
Superscribed, Dr. David H. Boyd, Lynchburgh, Virginia, pd. mail.

And at rules, held in the clerk's office of the said court, on the 1st Monday in July, 1852, up to which time this cause had been regularly continued at rules, without any other action being had therein, the plaintiff being dead, it was ordered that the fact be suggested of record.

And now, at this day to wit, at rules held in the clerk's office of the said circuit court, on Monday, July 4th, 1853, being the day and year first herein mentioned, the death of the plaintiff having been suggested for 12 months, and no action having been taken herein, and no application having been made for process to revive this cause in the name of the personal representatives of the said plaintiff, it is ordered that the same be dismissed according to law.

STATE OF VIRGINIA,
Corporation of Lynchburgh, to wit:

I, James W. Dunnington, clerk of the circuit court for the corporation of Lynchburgh, in the State of Virginia, do hereby certify that the foregoing is a true and perfect copy of the record and proceedings had in a certain suit pending in the late superior court of chancery for the Lynchburgh district, in the State aforesaid, and transferred according to law to the circuit superior court of law and chancery for the town of Lynchburgh, and from thence to the circuit court for the corporation of Lynchburgh aforesaid, between William H. Roane, plaintiff, and Jo. N. Bylen; David H. Boyd, and Thomas Williams, defendants, as fully and wholly as they appear and stand of record and on file in the aforesaid circuit court for the corporation of Lynchburgh. In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court at office in the corporation of Lynchburgh, this 19th day of February, 1855, and in the 79th year of the commonwealth.

J. W. DUNNINGTON. [L. S.]

1690

STATE OF VIRGINIA,
Corporation of Lynchburgh, to wit.

I, William Leigh, only judge of the circuit court for the corporation of Lynchburgh, in the State aforesaid, do certify that James W. Dunnington, who hath given the aforegoing certificate, is now, and was at the date of said certificate, clerk of the said circuit court for the corporation of Lynchburgh; that the said court is a court of record, and that the foregoing seal is the seal of said court. I further certify, that the said James W. Dunnington, as clerk aforesaid, is by law and ex-officio keeper of the records and proceedings of the late superior court of chancery for the Lynchburgh district, in said State of Virginia, and was such keeper at the date of his said certificate; that his signature to said certificate is genuine; that his said certificate and attestation are in due form, and by the proper officer. I further certify that the jurisdiction of the aforesaid chancery suit was by law transferred from said district court to said circuit court.

Given under my hand this 25th day of February, 1855.

WILLIAM LEIGH.

And upon the hearing of said cause the complainant offered and read the following record:

Know all men by these presents, that I, Joseph N. Bylen, of the county of Mercer and State of Kentucky, reposing full confidence in my friend David Hunt Boyd, of the county of Pittsylvania, State of Virginia, do this day nominate, constitute, and appoint said David Hunt Boyd my attorney in fact, for the purpose of executing a bond in the Richmond chancery court for me, as guardian of Sarah Roane, granddaughter of the Hon. Spencer Roane, dec'd; and also of entering into an indemnifying or refunding bond to the Hon. Wm. Brockenbrough, for the purpose of making said Brockenbrough safe in paying over to this my attorney, David H. Boyd, one thousand dollars and the interest due on the same, coming to me as the guardian of the said Sarah Roane—it being a legacy left by the said Spencer Roane to his granddaughter, Sarah Roane, daughter of Fayette Roane, deceased, the son of said Spencer. To all the acts and doings of this my attorney, David Hunt Boyd, in signing my name to the above-named records and receiving the legacy above-named, and passing my receipt for the same, I bind myself, my heirs, &c., in the same manner as if the same had been done by myself.

In testimony whereof, I have hereunto set my hand and affixed my seal on the 21st day of February, anno Domini 1826.

J. N. BYLEN. [SEAL.]

MERCER COUNTY,
State of Kentucky, set:

We, Elijah A. More and Geo. L. Waugh, justices of the peace

in and for the county of Mercer, State of Kentucky, do hereby certify that Joseph N. Bylen personally appeared before us and acknowledged the foregoing power of attorney to be his act and deed.

Hand and seal, &c., &c.

Feb'y 21st, 1826.

E. A. MORE,
GEO. L. WAUGH.

STATE OF KENTUCKY,
Mercer County, sct:

I, Thomas Allen, clerk of the court for the county aforesaid, do certify that Elijah A. Moore and George L. Waugh, whose names are affixed to the foregoing certificate, are acting justices of the peace in and for the county aforesaid, duly commissioned and qualified, and as such due faith and credit is and ought to be given to any of their official acts as such.

In testimony whereof, hereunto set my hand and affixed the seal of my office, this 21st day of February, 1826.

THO. ALLEN.

STATE OF KENTUCKY,
Mercer county, sct:

I, Joseph Blackwood, presiding justice of the peace in and for the county aforesaid, do certify that Thomas Allen, whose name is affixed to the foregoing certificate, is clerk of the court for the county aforesaid, and that his foregoing certificate is in due form.

Given under my hand, this 21st day of February, 1826.

JOSEPH BLACKWOOD, *J. P. M. C.*

Know all men by these presents, that we, Joseph N. Bylen and George Boyd, of the counties of Mercer, Kentucky, and Campbell, Va., are held and firmly bound unto Sarah Ann Roane, of the county of Mercer, State of Kentucky, in the just and full sum of twenty-three hundred and ten dollars, to be paid unto the said Sarah Ann Roane, her certain attorney, her executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 6th day of June, 1826. The condition of the above obligation is such, that whereas the above-named Joseph N. Bylen, as guardian and next friend of Sarah Ann Roane, by a decree of the superior court of chancery for the Richmond district, pronounced on the 8th day of March, 1826, in a suit depending therein, between Sarah Ann Roane, an infant, by the said Joseph N. Bylen, her next friend and guardian, plaintiff, and Wm. Brockenbrough, adm'r, with the will annexed, of Spencer Roane, dec'd, and John Roane, John Brockenbrough, Wm. H. Roane, and Thomas Hos-

kins, defendants, received of William H. Roane the sum of one thousand dollars, with interest thereon from the 4th day of September, 1823, until paid, in full of the legacy bequeathed to the said Sarah Ann Roane, by the said Spencer Roane, deceased: now, if the said Joseph N. Bylen shall pay to the said Sarah Ann Roane the said sum of money, and the interest thereof, when she shall marry, or attain the age of 21 years, or in the event that she shall die an infant intestate or unmarried, if he shall pay *to* the same to her representatives, then the above obligation to be void; else to remain in full force and virtue.

JOSEPH N. BYLEN, [SEAL.]
By DAVID H. BOYD, *his att'y in fact.*
GEORGE BOYD, [SEAL.]

Signed, sealed, and acknowledged in presence of—
JNO. D. RUTLEDGE.

STATE OF VIRGINIA,
Campbell county, to wit:

This day George Boyd, the security to the within bond, personally appeared before me, and made oath that his estate, after the payment of all his just debts, is worth twenty-three hundred and ten dollars, the penalty of the within bond.

Given under my hand, this 12th day of June, 1826.

JESSE BURTON.

CAMPBELL COUNTY, *to wit:*

This day John B. Rutledge personally appeared before me, and made oath that the obligors to the within bond, to which he hath subscribed his name as a witness, acknowledged the same in his presence to be their act and deed.

Given under my hand, this 12th day of June, 1826.

JESSE BURTON.

STATE OF VIRGINIA,
City of Richmond, to wit:

I, Eustace Robinson, clerk of the circuit court of the said city, in the State aforesaid, and, as such, keeper of the records of the late superior court of chancery, do hereby certify, that the foregoing are copies of a decree of the said superior court of chancery, and of a bond executed thereunder, and of the power of attorney under which David H. Boyd acted in executing the said bond.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said circuit court of the city of Richmond, this the 11th day of March, 1856.

EUS. ROBINSON, *Clk.* [L. S.]

The decree referred to in the certificate is omitted in this record, because the same decree is fully copied and set out in the first record submitted by the plaintiff to the court, as will appear upon reference thereto.

Test: JAS. L. TALBOT,
Clerk Cir. Court U. S., Dis't West Tennessee.

STATE OF VIRGINIA,
City of Richmond, to wit:

I, John A. Meredith, judge of the circuit court of the city of Richmond, in the State aforesaid, do hereby certify, that Eustace Robinson, who has given the foregoing certificate, is clerk of the said court, and that his attestation is in due form.

Given under my hand, this 11th day of March, 1856.

JOHN A. MEREDITH.

UNITED STATES OF AMERICA, *sct:*

I, James L. Talbot, clerk of the circuit court of the United States, in the eighth circuit for the district of West Tennessee, do hereby certify, that the foregoing transcript is a full and complete exemplification of the record and proceedings of the said court, in a suit lately pending therein and determined, wherein J. M. Mattingly, and his wife, Sarah Ann, were complainants, and John H. Boyd, adm. of David H. Boyd, deceased, was defendant, as the same are of record and on file in my office.

In testimony whereof, I hereto place my hand and affix the seal of said court. Done at office in the town of Jackson, on [SEAL.] the seventh day of May, in the year of our Lord one thousand eight hundred and fifty-six, and in the 80th year of the republic.

JAS. L. TALBOT.

UNITED STATES OF AMERICA.

Know all men by these presents, that we, J. M. Mattingly and Sarah Ann Mattingly, as principals, and Charles R. Hunt and Samuel McClanahan, as securities, are held and firmly bound unto John H. Boyd, administrator of David H. Boyd, deceased, in the penal sum of fifty-four dollars and sixty-six cents, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 21st day of June, 1856.

The condition of the foregoing obligation is such, that whereas the above bound J. M. Mattingly and Sarah Ann Mattingly, heretofore, on the 22d day of March, 1856, and during the session of the circuit court of the United States, in the 8th circuit for the district

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of West Tennessee, the Hon. West H. Humphreys presiding as judge, did obtain an order granting an appeal from the decree of said court, rendered on that day, [in a suit pending in said court, wherein said Mattinglys were complainants, and the said Boyd, adm., was defendant,] to the Supreme Court of the United States, at Washington city, in the District of Columbia:

Now, should the said J. M. Mattingly and Sarah Ann Mattingly prosecute their said appeal with effect, or in case of failure therein, shall stand to, abide by, and perform the judgment, sentence, and decree of the said Supreme Court in the premises, then the foregoing obligation shall be of no effect; otherwise the same shall remain in full force and virtue.

J. M. MATTINGLY, [SEAL.]
By his attorney, Samuel McClanahan.
SARAH A. MATTINGLY, [SEAL.]
By her attorney, S. McClanahan.
CHARLES R. HUNT, [SEAL.]
By his attorney in fact, Samuel McClanahan.
SAMUEL McCLANAHAN, [SEAL.]

June 26th, 1856.

The above bond is good and satisfactory for the purpose specified therein, and I approve of it.

W. H. HUMPHREYS,
U. S. District Judge, for the District of Tennessee.

I do certify that the foregoing is a correct copy of the original bond now on file in my office.

JAS. L. TALBOT,
Clk.